

Commitment beyond self.

Commitment beyond the law.

Commitment to the public good.

obedience to the unenforceable

Ethics and the Nation's Voluntary and Philanthropic Community



INDEPENDENT SECTOR

obedience to the unenforceable

About INDEPENDENT SECTOR

INDEPENDENT SECTOR is a nonprofit, nonpartisan coalition of more than 700 national organizations, foundations, and corporate philanthropy programs, collectively representing tens of thousands of charitable groups in every state across the nation. Its mission is to promote, strengthen, and advance the nonprofit and philanthropic community to foster private initiative for the public good.

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INDEPENDENT SECTOR gratefully acknowledges the support of the GE Fund for our current accountability project. INDEPENDENT SECTOR's survey of Ethical Codes and Accountability Standards lists a wide variety of standards, codes, and principles created for and used by nonprofit and philanthropic organizations to guide and evaluate their organizations' ethical practices and is available at www.IndependentSector.org.

Other tools and materials to help nonprofit and philanthropic organizations, including corporate giving programs, develop internal policies and practices that fulfill their commitment to and beyond the law are also available from the INDEPENDENT SECTOR website.



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Ethics and the Nation's Voluntary and Philanthropic Community

1991
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INDEPENDENT SECTOR

“Obedience to the unenforceable is the extent
to which the individuals composing the nation
can be trusted to obey self-imposed law.”

—*John Fletcher Mouton*

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introduction

Public trust is the most important asset of the nonprofit and philanthropic community. The rights and responsibilities that the independent sector enjoys are a result of the trust afforded to the organizations of this sector. Donors give to and volunteers get involved with charitable organizations because they trust them to carry out their missions, to be good stewards of their resources, and to act according to the highest ethical standards. Most fundamentally, voluntary and philanthropic organizations must abide by the highest ethical standards because it is the right thing to do.

In 1989, the Board of Directors of INDEPENDENT SECTOR convened a broadly representative group to provide guidance on ethical practices for voluntary and philanthropic institutions and their leaders. Their report, issued in 1991, is as timely and important today as it was 11 years ago. To ensure that trust in America's nonprofit and philanthropic organizations is strengthened and to address the ongoing need to promote sound ethical behavior, the Board of Directors of INDEPENDENT SECTOR has reaffirmed its support for this report.

The questions raised about accountability in the charitable response to the tragedy of September

11, 2001, and the series of corporate scandals over the past year have rekindled fundamental questions and concerns about important institutions in America, both charitable and for-profit. Our focus is on the voluntary and philanthropic community.

In updating and reissuing this report, IS recognizes that the work done by the Committee 11 years ago has great relevance today. While much else has changed, the fundamental principles of ethical behavior have not. In addition, we recognize that reinforcing the practice of ethical behavior requires constant attention. Therefore, this report is but one part of the ongoing initiative of IS to promote "obedience to the unenforceable."

executive summary

Americans are increasingly concerned about the ethical behaviors practiced in all of their institutions. Mounting media attention not only to abuses, but also to the place of ethics in our society as a whole is one indication of this concern. While these external concerns are important, our concerns about ethical behavior are not primarily a response to shortcomings or transgressions, but are based on our belief that the ethical behaviors and values we have articulated are the essential values for our society and it is right for us to model them.

While all institutions are under scrutiny, violations of legal as well as commonly held ethical standards in voluntary and philanthropic organizations are particularly troublesome because of the special trust the public has vested in our community. We have a long tradition of “organized neighborliness.” Voluntary association to serve the common good has provided cohesion and purpose in our society from the very beginning. Today, countless voluntary and philanthropic endeavors offer opportunities for a commitment beyond the self throughout society. These efforts enjoy certain freedoms and responsibilities because of a special trust between the public and the independent sector. The public expects high ethical standards to be

habitually practiced by voluntary and philanthropic organizations. Those who presume to serve the public good must assume a public trust.

To ensure that this trust is strengthened and to reaffirm the ongoing need for sound ethical behavior, the Board of Directors of INDEPENDENT SECTOR has reaffirmed its support for this report, as revised and updated. In 1989, IS asked a broadly representative group to provide guidance on what the institutions of the independent sector and their leaders should stand for. The Committee on Values and Ethics brought together a number of viewpoints, including nonprofit leadership; legal scholars; journalists; consumer and social advocates; representatives of higher education; and religion, government regulators, and ethicists.

The Committee’s charge was and our purpose now is not to develop specific standards. Those already exist in various parts of the independent sector. Rather, it is to examine the issue of ethical behavior in the voluntary and philanthropic community and raise the consciousness of organizations toward ethical concerns and adherence to higher standards of ethical behavior.

While the Committee’s creation in 1989 was motivated largely by concerns about legal issues relating to

the sector's freedoms, the Committee's work was and our present purpose is much broader. Legal compliance is, of course, a mandatory responsibility of the trustees and the directors of any organization. Our experience, however, confirms that setting ethical standards begins with commitment to a process—more important than any single code or standard. Adherence to high standards of ethical behavior requires inclusion of all individuals and entities affected by an organization's work. Therefore, this statement is addressed to grantseekers as well as grantmakers, to the smallest as well as the largest of organizations, to staff and volunteers as well as trustees.

INDEPENDENT SECTOR's Board of Directors approved the original statement on "Ethics and the Nation's Voluntary and Philanthropic Community" in January 1991. The current Board of Directors of IS approved this revised and updated statement on September 18, 2002.

We urge all organizations to adopt a process that includes constant commitment to ethical behavior. The process begins with consideration by trustees and staff of the importance of ethical standards. Trustees and staff should enter into deliberations leading to the establishment of an organizational creed that articulates the organization's commitment to ethical standards particular to the organization. All organizations

should also subscribe to and abide by a set of ethical codes or standards. These ethical codes or standards should be revisited yearly to report on levels of adherence, as well as reformulation. As experience is gathered, priorities may change. It also emphasizes renewal within organizations. This process is also a way for the leadership of voluntary and philanthropic institutions to build a closer sense of community within the organization.

We recognize that ethical practice is complex. It is not only the black-and-white evidence of law that challenges us, but also the much more difficult task of choices, some clearly ethical, and some representing ethical dilemmas. The essential test of ethical behavior is "obedience to the unenforceable," originally described by England's Lord Justice of Appeal John Fletcher Moulton 65 years ago as obedience to self-imposed law. By going beyond the law, or even the spirit of the law, the very best in individuals and institutions is expressed.

We have identified three levels of ethical behaviors. The first level of ethical behavior is to be concerned about obeying laws. The second is composed of those behaviors where one knows the right action but is tempted to take a different course. There is also a third level of consideration, where decisions are not a contest between good and evil but among competing options.

These present us with tough ethical dilemmas. Every philanthropic and voluntary organization confronts these levels of ethical behavior. While every situation or standard cannot be anticipated, we believe that there are essential values and ethical behaviors that all organizations within the independent sector have in common, including:

- Commitment beyond self;
- Obedience of the laws;
- Commitment beyond the law;
- Commitment to the public good;
- Respect for the worth and dignity of individuals;
- Tolerance, diversity, and social justice;
- Accountability to the public;
- Openness and honesty; and
- Responsible stewardship of resources.

To provide guidance for consideration of these values and behaviors, this report presents specific examples of illegal acts, unethical behaviors, and ethical dilemmas related to each of these values. We offer no answers to ethical dilemmas, because organizations must struggle with such decisions on their own. Rich benefits will derive from the process each organization follows in examination of its own values, ethical behaviors, and practices.

We believe it is essential that, at a minimum, all organizations in the sector:

- Adopt an organizational creed of ethical practices;
- Conduct an ethics audit or self-evaluation every year (this is as important as an annual fiscal audit);
- Subscribe to and abide by a set of codes or standards;
- Involve all of their constituencies in the process; and
- Infuse the process and the documents into the culture of the total organization.

Larger organizations should expand their efforts to develop a set of codes or standards where gaps exist.

Adoption of a creed will be effective only if it initiates a continuing conversation within the organization and among its various constituencies, reviewing principles in light of changes in the outside world. Similarly, subscribing to a set of codes or standards will only be effective if the organization incorporates those standards into its own operating norms.

We recommend that trustees be involved in and ultimately responsible for examinations of ethical behavior. These examinations are opportunities to review the purposes and conduct of the organization. Further, the independent sector should take on responsibility, individually and collectively, to create an informed public, aware of the standards and

purposes in the charitable community and able to make reasoned judgments about their support.

INDEPENDENT SECTOR has a special obligation to support and enhance this statement. Through wide dissemination, integration of its principles in the work of INDEPENDENT SECTOR, and collaboration on its recommendations throughout the voluntary and philanthropic community, INDEPENDENT SECTOR can exemplify the statement's purpose.

obedience to the unenforceable

Americans are concerned about the ethical behavior of their leaders and leadership institutions. In recent years repeated violations, and growing media attention to them, have made us even more aware of how important standards of ethical behavior are to preserving our integrity as a society and how vital it is for us to be able to trust one another.

The concern about lapses in ethical conduct touches every part of society. But the public expects the highest values and ethics to be practiced habitually in the institutions of the charitable, nonprofit sector. Because these institutions, fundamentally, are dedicated to enhancing basic human values, expectations of them are particularly high. **Those who presume to serve the public good assume a public trust.**

The Statement's Preparation and Premises

In 1989, the Board of Directors of INDEPENDENT SECTOR asked a broadly representative group of 30 persons to define as clearly as possible what this sector and all of its organizations should stand for. They came from a broad spectrum and included foundation, corporate giving, and nonprofit leadership; legal scholars; journalists; consumer and social advocates; representatives

of higher education and the religious community; government regulators of the sector; and ethicists. Their purpose was to ensure continued public confidence and address issues raised by the well-publicized misbehavior of some voluntary and philanthropic institutions.

In 2002, the INDEPENDENT SECTOR Board of Directors asked the IS staff to revise and update the report in light of similar concerns about public trust and sector accountability.

This report seeks to provide guidance on what voluntary and philanthropic organizations should stand for and act upon in relation to ethics and values. Its purpose is not to set definitive standards, because these already exist among the policies of some individual organizations and in codes issued by several national groups.

During the 18 months the Committee on Values and Ethics deliberated in 1989 and 1990, and in the subsequent deliberation by the IS Board of Directors in 2002, this statement evolved into what should be the general ethical concerns and behaviors of the independent sector, a richly diverse community of voluntary and philanthropic organizations held together by our commitment to community service. In fact, the changes made to the original 1991 statement in 2002 are

mostly updating of facts and not changes to the fundamental message.

The statement examines our unique tradition of voluntary association, the freedoms and obligations associated with it, some basic values and behaviors for all of us to consider, and ways to express these values. Higher levels of specification will need to be worked out by each organization.

INDEPENDENT SECTOR itself should exemplify responsible ethical behavior.

This statement also draws upon the experiences of the Committee members. In their time together they learned that the process of recognizing how values affect our decisions creates its own value. By collectively having to think through the dimensions and impact of ethical behavior, Committee members shared, built, tore down, and then built again as they began to understand and appreciate the complexity of the task. As individuals and as a group, they became much more conscious of why and how we act in an ethical manner. The Committee came to a keen appreciation for the great benefits that accrue to an organization from undertaking a process by which ethical matters are discussed and deliberated.

Engaging in this process is more important than any single code or standard. The process also needs to be dynamic, addressing the ongoing

societal changes that affect the ethical dimensions of decisions made in the independent sector. For example, several decades ago diversity by race, gender, disability, and sexual orientation among the trustees and staff of a nonprofit organization may not have seemed an expression of ethical behavior. Today, it is necessarily an ethical decision. Years ago, protection of privacy for individuals in the health system might have been only a secondary consideration; today, it is a constant ethical dilemma.

Defining, examining, and instilling ethical behavior is a vital process for all of us in the independent sector. Whether one's interest is AIDS or ozone, the character of our organizations ultimately will have an ethical component. We may stop and examine them or act instinctively. We earn the public's trust through our work in solving problems, and through our ethical behaviors. The Committee believes, as does author and social commentator Sissela Bok, that "trust is a social good to be protected just as much as the air we breathe or the water we drink."¹

In addition to understanding the importance of the process, the Committee came to understand the complexity of ethical practice. Most

¹ Bok, Sissela, *Address to 1990 Council on Foundations' Annual Meeting*, Council on Foundations, Washington, D.C., 1990.

often it does not involve the black-and-white evidence of law. It is the gray domain of ethical choices that creates tensions and dilemmas for those entrusted with the leadership as well as the day-to-day operations of voluntary and philanthropic institutions.

Obedying the law is the first and most obvious of our ethical obligations. It is “obedience to the unenforceable,” however—as England’s Lord Justice of Appeal John Fletcher Moulton said more than 65 years ago—that best measures the ethical behavior of individuals and of nations. The true test of greatness, he explained, “is the extent to which the individuals composing the nation can be trusted to obey self-imposed law.”²

In the independent sector, public trust stems from our willingness to go beyond the law or even the spirit of the law. We act ethically because we have determined that it is the right thing to do.

To Whom Is This Statement Addressed?

The ethical behavior of an institution is the ultimate responsibility of its trustees. The responsibility is shared, however, with staff leaders and other staff and volunteers of the institution. Their roles in establishing and maintaining ethical standards

within their organizations are distinct. The commitment is a shared one because it is critical that ethical considerations permeate every level within an organization.

Furthermore, the process of establishing ethical standards and their practice must take place among all those who benefit from the freedom accorded to the voluntary and philanthropic sector. Thus, this statement is addressed to both grantseekers and grantmakers. It applies to the largest and the smallest of our organizations—to family trusts, foundations, funds administered by banks and law firms, religious congregations, individual philanthropists, and corporate giving programs—from the neighborhood to international levels. Over 1.2 million charitable, advocacy, and philanthropic organizations and religious congregations exist in the United States, and if the local affiliates of these organizations and religious congregations are included, the number far exceeds 2 million.

Therefore, we are speaking to all who are part of the nation’s independent sector.

Our Traditions

Americans have always been committed to and dependent upon what we perceive and describe as “organized neighborliness.” We were a society of neighbors long before we had formal communities. We addressed our dependence through

² Moulton, John Fletcher, “Law and Manners,” *The Atlantic*, July 1927.

what James Luther Adams described as the “exercise of the freedom of association.”³ We created new institutions—churches, unions, granges, fire companies—and they became our networks for mutual activity. This “social capital” continues today as an essential part of our democratic structure, always offering opportunities for a commitment beyond the self and participation in the process of creating common good.⁴

The sector is as diverse as its component neighborhood improvement societies, churches and citizens who support them, overseas relief organizations, private schools and colleges, corporate foundations and public service programs, fraternal benevolence societies, conservation and preservation groups, local service organizations, community foundations, civil rights organizations, arts organizations, and millions of others. Whether one’s interest is wildflowers or civil rights, arthritis or clean air, oriental art or literacy, the dying or the newborn, organizations are at work. If no charitable effort suits one’s passions, it is possible in America to start one that does.

³Adams, James Luther, “The Indispensable Discipline of Social Responsibility: Voluntary Associations,” *James Luther Adams: The Prophethood of All Believers*, Beacon Press, Boston, 1986.

⁴Robert Putnam, *Bowling Alone*, Touchstone Books, New York, 2000.

⁵Philanthropic Research Inc. provides online access to Form 990 at www.Guidestar.org.

This freedom of association for our voluntary and philanthropic organizations is protected in law and in the public’s mind. While, the independent sector has historically enjoyed widespread confidence and support, that public trust cannot be taken for granted.

Public Expectations

Almost all independent sector organizations depend to some degree upon donations, which is money people are not obligated to give. They do so voluntarily in the faith that trustees, staff, and other volunteer stewards will spend the money in the most judicious way to achieve the results for which the contribution was solicited. This is very much an act of faith because people have limited ways to judge nonprofit organizations.

Nonprofit groups do not face public elections and consequent reorganizations as government entities do. Nor do they have a bottom line of profit or loss determined by customers, as in the commercial sector. Nonprofit organizations are now required by law to make copies of their financial information returns (IRS Form 990) and their application to the IRS for tax exemption (Form 1023 or Form 1024) available on request by any individual. The basic financial information (Form 990) is also now available via the Internet.⁵ Nonetheless, these documents

provide minimal information on the effectiveness of the organization's programs and services, and, by and large, people put faith in nonprofit organizations just because such organizations are supposed to be charitable.

The public assumes that nonprofit groups do their work with greater economy than government and with greater concern for individuals than either government or commerce. It believes they will work toward their goals in an honorable and humane way, with continuing regard for the rights and needs of individuals. The public has faith in the stewardship of voluntary and philanthropic organizations, but it also has concerns.

Clearly, abuses occur in the name of charity. The nonprofit sector has frauds and questionable operations. Unfortunately, their exposure gives the impression that the sector as a whole is losing its reliability. The public rightly demands the fullest examination of groups that ask for its support. The charitable community can expect and should welcome this greater scrutiny. Its leaders must speak out against waste, fraud, and abusive practices. The independent sector, along with government and the media, must address these violations of the public trust forcefully. Unethical and illegal practices are offensive to all philanthropic and voluntary organizations—that is the message

the independent sector and its leadership must convey, individually and together.

When the institutions of the independent sector do not reflect high standards of openness, honesty, and public service, their contributors and clients are ill-served. This sector depends upon public goodwill and participation. If public support is eroded, so is the capacity for public service.

Being Responsible and Accountable

The basic means by which the independent sector can ensure confidence in philanthropic and voluntary organizations is to demonstrate the quality of its leadership. This demonstration begins with full and consistent evidence that trustees, staff directors, and all other participants habitually reflect the ethics people have a right to expect of them and that they make ethical practices part of the organization's culture.

Some trusteeship responsibilities relate to the organization's status as a formal legal entity, such as being sure that required reports are submitted to government. However, most expectations are of the higher order of Lord Moulton's "obedience to the unenforceable," such as making the contributor's dollar go as far as possible for the client and the cause.

Although the higher calling of obedience to the unenforceable

constitutes the larger expectations of stewardship, our duties begin with obeying the law. The most obvious scandals involve stewards who do not obey the law or who stretch it so far in the direction of self-benefit that any semblance of public benefit is obscured. Because obedience to the law is basic though not always practiced, we begin there.

Trustees are responsible for legal compliance but often do not even take the step of knowing what they are supposed to ensure is done and whether it is, in fact, accomplished. For example, trustees should know federal, state, and local requirements relating to the organization's legal status and should make it their business to be certain the organization is in compliance.

There have been several court cases in which board members were held accountable largely because they failed to exercise reasonable oversight. When these cases are reported in the media, the trustees sometimes say that they have not seen financial reports, did not know what was going on, were not aware that the organization had contracted with a firm owned by a staff or board member, or simply were not clear that they had to take responsibility for knowing what was happening.

This ignorance of legal obligations leaves voluntary organizations vulnerable to oversights

that often place them in jeopardy. Being charitable is no excuse for laxity. Voluntary and philanthropic organizations need to build specific internal processes that educate trustees about their legal obligations and provide timely procedures to meet them.

Most often the legal problems faced by trustees and other stewards are not the result of malfeasance. Good people believing in good things frequently get into trouble. Yet, without checks, balances, and early warning signals, they have little hope of escaping spiraling legal difficulties.

Whether board members are called trustees, directors, governors, or something else, they are the trustees in the literal and legal sense. No matter how the organization is structured or the degree of authority delegated to staff or affiliates, the board (and therefore the trustees) is ultimately accountable for any breakdown, wherever it occurs.

In a 1984 court action involving an organization called "Friends of Clinton Hill," a sympathetic judge listened to the board members' reasons for not knowing that their association had failed to pay the government income taxes withheld or social security taxes. He described these volunteers with such terms as "selfless, dedicated, and compassionate" but said the law left him no alternative but to hold

them accountable for all taxes and stiff interest penalties.⁶

The law, however, is not punitive as long as the trustees' attention to responsibility is reasonable. Joseph Weber, former head of the Greater New York Fund, pointed out in *Managing the Board of Directors* that "this does not mean that a director needs to feel liability for every corporate loss or mishap that may occur. On the contrary, a director is generally protected from liability for errors of judgment as long as he or she acts responsibly and in good faith, and with a basic interest of the [charitable] corporation as the foremost objective."⁷

It is important to acknowledge that at times some voluntary organizations knowingly disobey certain laws, for example, by illegal sit-ins or by providing sanctuary for illegal aliens. An organization may feel such abridgements are necessary to fulfill its mission, but even courageous acts of conscience do not put people above the law. As indicated by Henry David Thoreau in *Civil Disobedience*, one must believe so completely in such acts as to be willing to pay the consequences.

Unenforceable Requirements

Much more challenging than following procedures set in law and regulation, however, is obeying the unenforceable. Many ethical situations are quite clear, but often there are no procedures to disclose them. For example, it is obvious that ethical issues must be considered if an organization is doing business with a firm controlled by a staff member's spouse, but if no conflict of interest policy exists and if there is no requirement for annual review of compliance with such a policy, how can the behavior be checked?

The first level of ethical behavior is to be concerned about obeying laws. The second is composed of those behaviors where one knows the right action but is tempted to take a different course. There is also a third level of consideration where decisions are not a contest between good and evil but among competing options. These present tough ethical dilemmas. Because charitable organizations often serve interests that have scant resources, they inevitably must confront difficult choices and provide answers to ethical questions. For example, who will and will not receive scarce health services such as dialysis?

An organization must have processes by which it can decide if the law is being obeyed, if thoughtful ethics are being practiced, and if tough ethical dilemmas are being openly considered, and decided.

⁶Rudolph, Robert, "Helpless Judge Assails Heartless, Meanies," *The Sunday Star Ledger*, June 5, 1983.

⁷Weber, Joseph, *Managing the Board of Directors*, Greater New York Foundations, New York, 1975. (Also see *Legal Obligations of Nonprofit Boards, A Guidebook for Board Members*, Revised, by Jacqueline C. Liefer & Michael B. Glomb, 1997).

Organizations that routinely utilize ethical decision making practices will be much better prepared to handle a crisis when it hits.

What Organizations Can Do

We cannot anticipate every ethical standard applicable to all philanthropic and voluntary organizations. The sector is wonderfully diverse and contributes richly to society because it embodies the pluralism and the freedoms so vital to our democratic system. Without proposing limits to that diversity, however, or implying that this is the definitive listing, we present the following values and ethical behaviors as what this sector and its organizations have in common and should stand for. We believe:

- **Commitment beyond self** is at the core of a civil society;
- **Obedience of the laws**, including those governing tax-exempt philanthropic and voluntary organizations, is a fundamental responsibility of stewardship;
- **Commitment beyond the law**, obedience to the unenforceable, is the higher obligation of leaders of philanthropic and voluntary organizations;
- **Commitment to the public good** requires those who presume to serve the public good to assume a public trust;
- **Respect for the worth and dignity of individuals** is a

special leadership responsibility of philanthropic and voluntary organizations;

- **Tolerance, diversity, and social justice** reflect the independent sector's rich heritage and the essential protections afforded it;
- **Accountability to the public** is a fundamental responsibility of public benefit organizations;
- **Openness and honesty** in reporting, fundraising and relationships with all constituencies are essential behaviors for organizations which seek and use public or private funds and which purport to serve public purposes; and
- **Responsible stewardship of resources** is a concomitant of public trust.

Beginning the Process

To begin the process, we believe every organization should adopt at least a simple organizational creed committing itself to ethical practices. The extent of each statement will depend upon the size and capacity of the organization, but it need not be elaborate. As an example:

Organizational Creed of Ethical Practices

We believe that as stewards of [organization], which has been established for public benefit and has legal standing for that purpose, we have accepted a public trust to abide by high standards of performance and ethical behavior.

Adoption of a creed will be effective only if it initiates a conversation within and throughout the organization. But an organization cannot stop there.

We believe we all must continue to review these principles in light of changes in the world around our organizations, and we must continue to explore the kinds of dilemmas that occur within our organizations on a daily basis. We urge persistent and consistent moral leadership by trustees and staff leaders that asks all those associated with an organization to participate in setting an ethical environment.

We also believe it is essential that every philanthropic and voluntary organization take enough time, at least once a year, for an organization's *internal* "ethics audit or self-evaluation." This examination would ask at least three questions:

1. Have the requirements for our legal standing been fulfilled, such as submitting all required reports and with full and honest disclosure?
2. What, if any, activities or practices of the board, staff, or organization are there that might be contrary to our organization's creed of ethical practices and articulated core values?
3. Are there changes in the social, demographic, or economic contexts of our interest that compel us to make different and/

or more difficult ethical choices? If so, what changes are there that deserve notice?

Further, we recommend that independent sector organizations undertake an *external* ethics audit or evaluation every few years, using trained staff or personnel from other voluntary and philanthropic organizations, universities, or nonprofit consultant organizations. An outside look can prevent ethical processes from becoming so routine as to be irrelevant, introduce different perspectives and analyses, and affirm good practice.

Beyond a creed and regular examinations of practice, we believe that all organizations should voluntarily subscribe to a set of standards that reflect sound ethical behavior. The standards of the Better Business Bureau Wise Giving Alliance are one such set of standards with broad applicability to the charitable sector. The Council on Foundations has a set of standards that are applicable to grantmaking philanthropic organizations. The Donor Bill of Rights is a declaration of the rights of donors that nonprofit organizations should respect in their fundraising practices. And many subsectors, from museums to international aid groups to evangelical organizations, have standards with specific relevance to their field of activities.⁸

Where applicable standards do

not exist and where a particular subsector believes that other standards do not address their needs, we recommend that specific standards be developed for that subsector. For example, the American Association of Museums has developed a series of standards that cover a number of issues specifically applicable to museums.⁹ In addition, larger organizations should develop more complete codes of ethics and/or standards or policies, which govern the organization's ethical performance. These should include a timetable and process for the evaluation of performance in accord with the codes or policies.

A model that the Committee on Values and Ethics believes incorporates ongoing attention to ethical standards is that developed by the Land Trust Alliance. Its "Land Trust Standards and Practices"¹⁰ contains 15 overarching statements of standards that each land trust should unarguably meet. These cover such topics as purposes and goals, fundraising, board accountability, conflict of interest, basic legal requirements, and volunteers. Each

statement is followed by a series of practices that describe more specifically how the standards may be implemented.

For example, Standard #5 concerns fundraising and includes this discussion:

A Land Trust must conduct fundraising activities in an ethical and responsible manner. Because fundraising is a critical, ongoing activity of every active land trust, it must be done not only with an eye toward how much can be raised this year, but with an understanding of how fundraising practices affect the long-term credibility of the land trust.

Practices

Charitable Solicitation Laws. The trust complies with state charitable solicitation laws.

Donor Notification of Deductibility. If a donor receives a premium or other substantial benefit in exchange for a contribution, the land trust's fundraising solicitation informs the donor that only the portion of the contribution in excess of the fair market value of the benefit is tax-deductible.

Accurate Representations. All representations made in promotional, fundraising, and other public information materials are accurate and not misleading with respect to the organization's accomplishments, activities, and intended use of funds.

Use of Funds as Specified. All funds are spent for the purpose(s) identified in the solicitation or, where not specifically solicited, in accordance with any stated wishes of the donor.

⁸ For further information on and examples of ethical codes and standards, see INDEPENDENT SECTOR'S web-based resource center on Ethics and Accountability at <http://www.IndependentSector.org>.

⁹ American Association of Museums, "Code of Ethics For Museums 2000," n.d., at www.aam-us.org.

¹⁰ Land Trust Alliance, "Land Trust Standards and Practices," n.d., at www.lta.org.

Reasonable Fundraising Costs. Overall costs of fundraising are reasonable as a percentage of funds raised.

Who Should Be Involved?

In developing and implementing ethical standards, organizations should involve fully all of their constituencies, internally and externally. Each needs an opportunity to shape the organization's values and ethics and the modes of compliance to them. We believe that maximum meaningful involvement is the single most important step in the process to ensure that an organization is true to its values and public trust. Leadership opens the door. The opportunity to participate depends upon the receptivity of the trustees and senior staff to making this process an open, honest, and essential mission.

Organizations should do everything possible to be certain the documents and the values they reflect become part of the culture of the total organization. For example, orientation sessions for new board members, staff, and volunteers should include review of the creed of ethical practices and other documents related to values, standards, and ethics.

Just as we believe that voluntary and philanthropic organizations should subscribe to or develop codes or standards beyond a creed of ethical practices and annual review of

performance, we also recommend that trustees be involved in the process and ultimately responsible for approval of such reports.

Merely signing off on legal requirements or accountability standards is too perfunctory to fulfill our vision. The trustees' reviews should be thorough and aim beyond the mere prevention of problems. We urge that the process be seen as one that can affirm the good an organization does and help those involved with it to be proud of what they do. This is an opportunity to express respect for individuals and causes, to encourage creativity, and to create a committed community.

Illegal Acts, Unethical Behaviors, and Ethical Dilemmas

To provide more specific guidance, the following examples of illegal acts, unethical behaviors, and ethical dilemmas are related to a number of the value statements articulated above. We offer no answers to ethical dilemmas, because organizations must struggle with such decisions on their own. Rich benefits will derive from the process each organization follows in examination of its own values, ethical behaviors, and practices. We are providing these examples but encourage each organization to take hold of these, struggle with them, and find applications for their own

organizations. In addition, many of the examples found below do not fit neatly into a single value statement, so they are intended simply to be illustrative of what organizations may encounter in their own situations.

Commitment Beyond Self

Example of an illegal act: The board agrees to sell property to a board member's spouse without competitive bidding and at a price below fair market value.

Example of unethical behavior: The CEO of a financially strapped organization continues to fly first-class on short business trips while the organization has to lay off staff.

Example of an ethical dilemma: A board member who heads the best public relations firm in town is the volunteer chair of your publicity committee, and has a contract for some of the organization's advertising. While the organization has complied with all the requirements of the intermediate sanctions law, is this relationship acceptable and if so, under what conditions?

Obedience of the Laws

Example of an illegal act: A solicitation indicates that contributions are tax-deductible when they are not.

Example of unethical behavior: Trust Fund trustees are paid inflated annual

fees for very few meetings and decisions.¹¹

Example of an ethical dilemma: The organization debates undertaking an illegal sit-in to call attention to the dangers of a new nuclear power plant. Legal counsel says that even if they succeed there are likely to be arrests. What do you do?

Commitment to the Public Good

Example of an illegal act: A private foundation does not live up to the minimum payout requirement for grants.

Example of unethical behavior: A foundation's grant guidelines are broad and its application procedures are complicated, but most of the money goes annually to a few institutions with which foundation trustees have affiliation and which submit sketchy applications and reports.

Example of an ethical dilemma: Should there be any compromise in your foundation's standards or procedures if you receive a request for joint funding of a project from another funder that recently responded favorably to your request for joint funding?

¹¹ In the 1991 edition of this report, this example was given as an instance of unethical behavior. However, with the passage of the Intermediate Sanctions Law in 1996, current law prohibits excessive payments to trustees.

Respect for the Worth and Dignity of Individuals

Example of an illegal act: Hirings and promotions that deny equal employment opportunity in accord with the law.

Example of unethical behavior:

Despite high-quality work, an employee is passed over for promotion for no other reason than a personal difference in style between the employee and the supervisor.

Example of an ethical dilemma: What do you do when an ad hoc group of the organization's clients demand to meet with the board to present grievances and the staff says that they will quit if the board caves in to these chronic complainers?

Tolerance, Diversity, and Social Justice

Example of an illegal act: A staff person is identified as a leader of a conservative fundamentalist sect and is dismissed from his research position.

Example of unethical behavior: No minority persons are on a social service board serving minority neighborhoods.

Example of an ethical dilemma:

Should grants be given to a corporation's potential detractors or to causes poorly regarded by some employees?

Openness and Honesty

Example of an illegal act: Required government reports are not filed or are filed with inaccurate information.

Example of unethical behavior: The combination of four grants given to the organization by different donors covers 200 percent of the education director's time, salary, and space.

Example of an ethical dilemma: Does the grantmaker tell an applicant the application was terrible and does the applicant tell the grantmaker the process was rude?

Accountability to the Public

Example of an illegal act: Form 990 is not available to the public.

Example of unethical behavior: For the fifth year in a row, the fundraising appeal talks only about plans and not about what's been done to date.

Example of an ethical dilemma:

Should a nonprofit that espouses full disclosure but is dealing with a very controversial cause publish its list of contributors?

Responsible Stewardship of Resources

Example of an illegal act: A friendly candidate for public office uses the organization's copying and fax machines routinely.

Example of an illegal act: To deal with a worsening deficit, money withheld from employees' paychecks for federal income tax is not turned over to the IRS.

Example of unethical behavior: In lieu of salary, the staff director prefers a percentage of all funds raised.¹²

Example of unethical behavior: Services are targeted to clients with the least needs because the organization wants to show funders high numbers of people served successfully.

Example of an ethical dilemma: The all-volunteer organization recognizes that to hire its first executive director will absorb all the money on hand and in sight. Half the board argues that all the time and money will go to support the position with nothing left for programs and the other half says it's a necessary investment in future growth. What should they do?

Example of an ethical dilemma: Should a rapidly growing foundation greatly increase the size of its grants to a relatively few known and respected applicants or increase greatly the number of organizations

funded, even though this means concomitant increases in its staff?

We believe the values and ethical behaviors described above represent minimal considerations for the independent sector. They form the basis for the process and the practices that should characterize all that we do. It is important for each organization to apply these to its own circumstances.

Education of the Public

Good performance is the best way to fulfill public trust, but individual voluntary and philanthropic organizations and the independent sector as a whole should help the public distinguish between effective and ineffective stewardship. The independent sector also needs to support and increase public education about the charitable community. The public should know what questions to ask, where to get information, how to interpret reports—all those skills which would enable it to make informed decisions about appeals for time and money.

We believe the sector can be proud of what it is and does. Policies and actions that enhance a trusting partnership with the public will build on that credibility. And they will do much more. An independent sector whose actions earn public confidence ultimately contributes to the integrity and strength of society as a whole.

¹² Such an arrangement might also be an example of an illegal act, in violation of the Intermediate Sanctions Law, if the amount paid to the staff director exceeds what is reasonable for the services rendered.

INDEPENDENT SECTOR's Role

INDEPENDENT SECTOR has a special obligation to support and enhance this statement. Through wide dissemination, integration of such principles in its work, and collaboration on its recommendations throughout the voluntary and philanthropic community, INDEPENDENT SECTOR can exemplify the statement's purpose.

concluding summary

The public is demanding greater demonstration of ethical behavior by all of our institutions and leaders.

Our concerns about ethical behavior are not primarily a response to shortcomings or transgressions, but are based on our belief that the ethical behaviors and values we have articulated are the essential values for our society and it is right for us to model them.

There have always been high expectations of philanthropic and voluntary organizations, but because of recent allegations of wrongdoing in the charitable community and illegal activity in the corporate and accounting communities, the potential of eroding public trust is great.

To the extent the public has doubts about us, we shall be less able to fulfill our public service.

Therefore, each and every one of us has a responsibility to develop policies and practices that will serve regularly as guidance and checkpoints ensuring obedience to the law, ethical practices, and responsible stewardship.

In addition, we must all make far clearer to the public that this sector

and its organizations practice high standards of ethical behavior.

INDEPENDENT SECTOR believes it is essential that, at a minimum, all organizations in the sector:

- Adopt an organizational creed of ethical practices;
- Conduct an ethics audit or self-evaluation every year (this is as important as an annual fiscal audit);
- Subscribe to and abide by a set of codes or standards;
- Involve all of their constituencies in the process; and
- Infuse the process and the documents into the culture of the total organization.

Larger organizations should expand their efforts to develop a set of codes or standards where gaps exist.

INDEPENDENT SECTOR will continue and expand its role to assist philanthropic and voluntary organizations to be aware of and fulfill the public's appropriately high expectations and to participate with all other institutions in society for adherence to higher standards of ethical behavior.

committee on values and ethics

1989-1991

Affiliations noted are during the time the Committee was in session.

Ira S. Hirschfield, Chairperson
Rockefeller Family & Associates

Robert L. Payton
Indiana University

Robert Atwell
American Council on Education

Wendy Puriefoy
Boston Foundation

Jeanne M. Bates
Hallmark Corporate Foundation

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William L. Bondurant
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Benjamin R. Shute
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National Association of Attorneys General

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New from INDEPENDENT SECTOR!



Ethics

*and the Nation's Voluntary
and Philanthropic Community*

Share a copy with
your board and staff!

At a time when the public is concerned about the ethics of government, businesses, and voluntary and philanthropic organizations and demands greater demonstration of ethical behavior by all institutions, INDEPENDENT SECTOR announces a new “Ethics and Accountability” initiative providing tools and guidance to help the boards and staff of nonprofit organizations develop clear standards and procedures for ethical behavior.

Ethics and Accountability Resources

INDEPENDENT SECTOR offers the following publications and online resources:

- ***Obedience to the Unenforceable: Ethics and the Nation's Voluntary and Philanthropic Community***—INDEPENDENT SECTOR has recently revised this statement of ethics, originally issued in 1991. *Obedience to the Unenforceable* provides sample language for an organizational creed, offers tools to resolve ethical dilemmas, and provides an important mandate for nonprofit leaders to work with their board, staff, and constituents to infuse ethical behavior into the culture of their organization.
- ***Compendium of Standards***—a web-based compilation of the standards of more than 60 nonprofit organizations and associations. Available online at www.IndependentSector.org.

- ***Intermediate Sanctions: What You Need to Know About the IRS Regulations***—this booklet helps your organization interpret and apply new regulations from the IRS clarifying “intermediate sanctions—the penalties the IRS can levy against nonprofit trustees and executives who receive or authorize salaries or contracts deemed excessive.

Recommendations for Nonprofit Organizations:

- **Adopt** an organizational code of ethical practices;
- **Conduct** an ethics audit every year;
- **Subscribe** to and abide by a set of standards;
- **Involve** all constituencies in the process; and
- **Infuse** the process and related documents into the culture of the total organization.

www.IndependentSector.org

See reverse for information on ordering Ethics and Accountability resources.

Ethics *and the Nation's Voluntary and Philanthropic Community*

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